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In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. [redacted] 94

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Petitioners,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
Respondent.

APPENDIX TO BRIEF ON BEHALF OF PETITIONERS.

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In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 868.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Petitioners,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
Respondent.

APPENDIX TO BRIEF ON BEHALF OF PETITIONERS.

FOREWORD.

The purpose of this appendix is to make available to the Court in convenient form a complete record of the statements and discussions contained in the legislative history of the enactment of the original Railway Labor Act of 1926 and the 1934 amendments to the Act regarding the extent that this legislation was expected to limit or nullify the existing right of railway employees to engage in strikes. The guiding rule in selecting these statements and discussions from the record was to include sufficient context with the statements which pertain specifically or by clear inference to the subject of strikes and the so-called "compulsory arbitration" process of the National Railroad Adjustment Board, so that the Court may correctly understand and evaluate the opinions reflected by this record.

Following the statements relating to the original Railway Labor Act and the 1934 amendments to this Act, we have reproduced quotations from the statement presented

by Mr. George M. Harrison to the Subcommittee on Railway Labor Act amendments of the Committee on Labor and Public Welfare, United States Senate, Eighty-First Congress, Second Session, during hearings on S. 3463, which became known as the Donnell Bill (1950). These statements reflect Mr. Harrison's opinions regarding the primary purpose of this Bill, which was to amend the Railway Labor Act so as to outlaw all strikes by railway employees, and also provide for judicial review of Adjustment Board awards.

THE RAILWAY LABOR ACT OF 1926 AND THE 1934 AMENDMENTS TO THE ACT.

1. The Statutory Language.

The Railway Labor Act does not contain language specifically forbidding employees to engage in strikes for the purpose of enforcing the settlement of grievances, as it might easily have contained, assuming Congress to have been of that mind. If Congress intended that the right to strike in support of grievances should be outlawed and the settlement of grievances by the use of the Adjustment Board be substituted for the use of economic force, such intention can be discovered only in the implications to be gleaned from the language of the Act. Among such language is the following (italics in all quotations ours):

The recital of "general purposes" found in Section 2 of the present Act includes the following statements:

> "(1) to avoid *any* interruption to commerce or to the operation of any carrier engaged therein; * * *
>
> "(5) to provide for the prompt and orderly settlement of *all* disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 2, First, provides—

> "It shall be the *duty* of all carriers, their officers, agents, and employees to exert *every reasonable* effort * * * to settle *all* disputes * * *."

Section 2, Second, provides—

> "*All* disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Section 2, Sixth, provides—

> "In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the *duty* of the designated representative or representatives to specify a time and place for conferences."

Section 2, Tenth, contains in its last sentence the following proviso:

> "*Provided,* that nothing in this Act shall be construed to require an *individual* employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of *his* labor by an *individual* employee an illegal act; nor shall any court issue any process to compel the performance by an *individual* employee of such labor or service, without his consent."

Section 3 of the Act, after providing for the establishment of the Adjustment Board, reads as follows:

> "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements * * * shall be handled in the usual

manner * * *; but, failing to reach an adjustment in this manner, the disputes *may* be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board * * *."

Section 3, (m) provides that awards rendered by the Adjustment Board, "shall be *final and binding* upon both parties to the dispute, *except* in so far as they shall contain a money award."

The 1926 Railway Labor Act contained, in Section 2 thereof, a statement of "general duties" to the effect that it was the duty of carriers and their employees "to exert every reasonable effort" to settle all disputes arising out of the application of collective agreements; to appoint representatives for this purpose, to confer, etc. The language of the 1926 Act in this regard is substantially the same as the language of the 1934 amendments.

The provisions of the 1926 Railway Labor Act called for the establishment of regional or system boards of adjustment instead of a national adjustment board. Section 3 contained the following seemingly "compulsory" language:

"Boards of Adjustment *shall* be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees.

"The agreement—

"(c) shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the disputes *shall* be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts, etc."

"(e) Shall stipulate that decisions of adjustment boards shall be *final and binding* on both parties to the dispute and it shall be the duty of both *to abide* by such decisions."

In Section 9 of the 1926 Act, following the adjustment board, the Mediation Board and the arbitration provisions, but before the emergency board provision, appears this paragraph:

"Nothing in this Act shall be construed to require an *individual* employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of *his* labor or service by an *individual* employee an illegal act; nor shall any court issue any process to compel the performance by an *individual* employee of such labor or service, without his consent."

It will be observed that this reservation in the 1926 Act of the right of an individual to quit work or refuse to work is in language identical to the corresponding proviso in Section 2, Tenth, of the 1934 Act.

Any attempt to determine the intention of Congress in 1934 as to whether it intended to preserve or to take away, the right of railway employees to strike in connection with the settlement of their grievances, would be incomplete and probably inaccurate without first determining the intentions of Congress in this respect when it enacted the original Railway Labor Act in 1926.

2. Hearings on the 1926 Act.

The bill that became the Railway Labor Act of 1926 was introduced by Senator Watson on January 7, 1926. It was identified as S.2306 and was known by the popular name of the "Watson-Parker Bill." In the hearings held before the Senate Committee of Interstate Commerce, Sixty-Ninth Congress, First Session, Mr. A. P. Thom,

general counsel to the Association of Railway Executives, appeared in support of the bill. He explained that S.2306 was overwhelmingly supported by the carriers of the country. He explained the primary features of the bill by saying it required that every effort be made to make and maintain collective agreements, and that all disputes be considered in conferences between the parties. He explained that the bill provided for adjustment boards to be established by agreement between the parties, and also that a board of mediation be established for the purpose of intervening in disputes when it developed that the parties were unable to settle their disputes under the other provisions of the law. Mr. Thom then elaborated upon the interrelation between the system or regional adjustment boards and the board of mediation as follows:

> "Mr. Thom: The committee will observe that disputes between carriers and their employees are thus divided into two classes, one relating to grievances and to the interpretation and application of existing agreements as to rates of pay, rules, and working conditions. The other relating to changes in rates of pay, rules, and working conditions. These two classes are dealt with differently in the bill. As to both there is a requirement that there shall be an effort to agree between the parties in conference. But if there is no agreement on the disputed matter in conference then the dispute, if it relates to grievances or to the interpretation and application of existing agreements, whether they relate to rates of pay, rules or working conditions, that dispute must be left to an adjustment board consisting of representatives of the two parties, and an effort shall be made to adjust that by that board.
>
> "If it relates to changes in rates of pay, rules, or working conditions, to new agreements with respect to these matters, then, as I say, that must be con-

sidered in the first instance in conference. Failing that it does not go to an adjustment board, but the duties of the board of mediation in respect to it at once apply, as the duties of the board of mediation also apply to any dispute respecting grievances or the application of agreements not adjusted by the proper adjustment board and not adjusted in conference. So that this board of mediation comes into play in respect to all classes or disputes that are not adjusted under the provisions of the act at a stage before it becomes a duty of the board of mediation to intervene" (pp. 10-11, Hearings before Senate Committee on Interstate Commerce, 69th Cong., 1st Sess., on S.2306).

The 1926 Railway Labor Act was the result of agreement between the carriers and the representatives of labor. It represented a compromise of methods for maintaining the uninterrupted flow of commerce (p. 9, Report of Senate Committee Hearings). The methods and procedure incorporated in the Act were approved by labor, but these did not include a surrender by labor of the right to strike in support of grievances. There could hardly be more reliable authority for this fact then the statements of Mr. Thom, in view of the fact that he was speaking for the Association of Railway Executives. His statements to this effect are as follows:

"Mr. Thom: I have tried to look at the facts as they presented themselves to me, and I gave that opinion to my clients, that there was no longer any chance whatever of the preservation of that system of settling labor disputes, and a new one must be found.

"The Chairman: And it was in recognition of that evident fact that these conferences occurred or began?

"Mr. Thom: Yes. Now we took the matter up. We tried to find a method of creating understandings between the carriers and their employees instead of

misunderstandings. We tried to find a method which both parties said would work to prevent the disturbance of transportation. We tried to reach an agreement, and we have done that, in the spirit not of forcing or attempting to force the application of the last extreme of congressional power in respect of these matters. But of finding a way which would establish friendship instead of antagonism between us and our employees. Of committing us both to a system which we both see will accomplish the result of not disturbing transportation. We could not do that if we insisted on everything that we thought ought to be in a bill. We could not reach an agreement if the labor people insisted on everything that they thought ought to be in a bill. It was a compromise of opinion.

"We come here with that agreement. We come here with the implication by our coming that both parties are committed to this as a means of preventing interruption of transportation. And that every step in it must be pursued before there is an interruption of transportation. The labor men would not be able to justify their application for this measure if it would result in an interruption of transportation until every step in this bill had been pursued. The carriers could not justify themselves in public opinion if they brought about a dispute which would interrupt transportation before following each step in this bill.

"Now there are certain things that labor is very much opposed to. There are certain things that they do not want to write in a bill. It is a part of the principles of their organization. They do not want to write an antistrike clause in a bill. They regard that as fundamental with them. They are willing to say, 'We will pursue every step in this case before there is a strike. But we will not consent to an antistrike clause.' And the conclusion of the railroad executives is that the time has not come in the public interest when it is necessary to press down that crown of thorns upon labor's brow. If what we now offer does

not result in a continuity of transportation, the time will come for something else. But in the judgment of experienced railroad executives who have been dealing with this question all their lives, who are well acquainted with the working of matters between labor and the railroad, they think that this bill if enacted into law, will be the end of strikes, and will be the beginning of a condition of peace and understanding between the railroad employees and the executives.

"You may be told that there are certain things in this bill that are not a prohibition of a strike. That is true. But it is the belief of these railroad executives that what is in that clause, in this long process of negotiation, in the long process of mediation, in the long process of fact finding, in the time of cooling that that will bring about, the result will be that there will be no interruption of transportation.

"We come to you with the assurance that that is a conclusion of experienced railroad executives, and we come to you with the request that you give this plan an opportunity to test itself. If we fail it will be contrary to our expectations, and then the public is perfectly free to adopt the most stringent methods of preventing the interruption of transportation that it may be inclined to adopt. We do not think the time has come for that. We think that if that is done now it would result in antagonism between the railroads and their employees, whereas we want peace and understanding.

"When the time comes that this does not work the public, of course, must not be permitted to suffer. They must be protected in all events. But in the opinion of the executives this will work and this will prevent an interruption of transportation" (pp. 15-17, Report of Senate Committee Hearings).

In the course of the hearings, Senator Bruce interrupted Mr. Thom to add his confirmation to Mr. Thom's

statement that the right to strike was not being taken from the employees by this bill. Senator Bruce's statement was as follows:

"Senator Bruce: May I interrupt at this point, Mr. Thom?

"Mr. Thom: Yes.

"Senator Bruce: Now, of course, I do not want to see any direct provision as to strikes put in this bill. I do not think that the exigencies of the situation call for that. And we all know that what labor has gained, and justly gained, has been due to the use of the strike. So I am, for one, perfectly willing to let that remain as it is, subject, of course, to the rights of the courts to redress any abuses involving violations or what not resulting from strikes, but I do not think that we ought to impair the right to strike.

"And then, of course, the right of any man to get up and quit work, unless he is under some absolutely compulsory contract or obligation, when he sees fit, is fundamental. That is the right of the citizen. Nobody wants to disturb that. But so far as I can see the only thing in this bill that really protects the rights of the third party to these arrangements between the carriers and their workers is this emergency clause, this provision for the fact-finding commission" (p. 25, Report of Senate Committee Hearings).

The subject of the right of employees to strike arose a third time before the Senate Committee when Daniel Willard, President of The B & O RR, was appearing in support of S.2306. The colloquy was as follows:

"Mr. Willard: Now, this bill as proposed very largely reflects in printing what has actually been going on in the past even before there was legislation, except it does advance one step further than any piece of legislation has advanced in this country before, and that is it does provide for an emergency

commission which shall have 30 days to make such inquiry as it can, and it does provide that the *status quo* shall be maintained 30 days thereafter. That is a distinct advance in legislation in this country. Not, however, unlike what has been done in Canada.

"Now, to refer in detail to the bill. I will refer very briefly to the adjustment boards which are provided for, because they are provided for in the present act. It is a fact that they have not been made use of to the extent that they might have been made use of, but where they have been organized and where they have been used the results, I think, have been very satisfactory.

"The Chairman: Have you used them on your road?

"Mr. Willard: Yes, sir; not on our road exclusively, but the Baltimore & Ohio, the New York Central, the Boston & Maine, and one or two other roads in the eastern group arranged for a joint board of adjustment, which has been in existence, I imagine, more than two years; that the members of that board meet once a month and they deal with such matters as come before it under the law, and I do not recall that a single case originating with the Baltimore and Ohio has been appealed from the judgment of that board to the judgment of the labor board in Chicago. It has been able to deal satisfactorily with all the questions we have sent to it so far. I think Mr. Crowley will say how it works with the New York Central, but I think very much the same. And in other parts of the country similar arrangements have been tried. Some of the roads have had their own adjustment boards on their own system alone, and I understand they work satisfactorily. So that there is nothing new in the idea of an adjustment board, and it is, I think, a very useful, helpful agency in dealing with matters such as under consideration.

"There is nothing new, in a way, in a board of

mediation, because the Erdman Act and the Newlands Act provided for that. I think it is a mistake to think of the Erdman Act and the Newlands Act as having been failures. On the contrary, it seems to me under all the circumstances they have a very creditable record of accomplishment. However much I as an employer might like to see a law that could absolutely prevent strikes, I assume that we have not reached the stage in this country yet where we can have a compulsory law of that kind.

"Senator Bruce: I do not want to put an end to strikes where they are justified.

"Mr. Willard: Yes. Now, if we admit that, then, of course, we must admit that, human nature being imperfect, conditions may arise when strikes will happen. But I think our record of strikes in this country on the railroads on the whole is a rather creditable record, and in only one instance that I know of did the legislation of the period absolutely fail, and in that instance Congress stepped in itself and decided the question itself as an arbitrator, it might be said. The case was put before Congress and the Adamson law was enacted. Now, that is the only case that I recall where a law can be said to have definitely failed. And I think too little consideration has been given to the great number of cases where the agencies of the law were invoked and did measurably meet the situation. In the majority of such cases the mediators settled the questions. The questions involved did not go to arbitration at all."

(pp. 151-152, Report of Senate Committee Hearings.)

Nowhere in the record of Congressional proceedings prior to the enactment of the Railway Labor Act has there been found any contradiction of the opinions quoted *supra* to the effect that the Congress did not intend, in 1926, to deny to employees the right to strike in support of griev-

ances if the grievances were not settled in conferences or by resort to the other methods that were established by the Railway Labor Act for the purpose of settling grievances. The 1926 Act contains but one limitation on the right to strike. That limitation was, as explained in Dan Willard's testimony, a prohibition against striking when the President appoints an emergency board to investigate a threatened interruption of commerce, so that the *status quo* is maintained until the end of 30 days after the emergency board makes its report to the President.

The record is clear that Congress, when it enacted the 1926 Railway Labor Act, did not intend to curtail the right to strike, except in the limited manner just described. We may, therefore, turn to the Congressional Record for the purpose of ascertaining what changes Congress intended the 1934 amendments should make in the Railway Labor Act as enacted in 1926.

3. Hearings on the 1934 Amendments.

The 1934 amendments to the Railway Labor Act constituted Senate Bill 3266. The bill was introduced by Senator Dill. Substantially identical bills were introduced in the House by Sam Rayburn as H. R. 7650, and by Robert Crosser as H. R. 9689. Hearings on S.3266 were held by the Senate Committee on Interstate Commerce on April 10, 12, 18, and 19, 1934, and hearings were held on the bills before the House by the Committee on Interstate and Foreign Commerce on May 22 to 25, inclusive, 1934.

The man who was probably the leading proponent of the 1934 amendments was Joseph B. Eastman, Federal Coordinator of Transportation. He explained during the hearings before the Senate Committee the reason for amending the 1926 Act, as follows (italics ours):

"This Railway Labor Act has now been tried for a period of 8 years. It has served a very useful purpose and has brought about many good results, but experience has shown that it is in need of improvements. The bill before you, S.3266, proposes such improvements. *It does not depart from the general principles of the present Railway Labor Act,* but instead is designed to reinforce those principles and provide for their more effective application. It seeks not to overturn but to perfect what has been done."

(p. 10, Hearings before Comm. on Inst. Comm.; 73d Cong., 2d Session.)

This statement that the 1934 amendments were not intended to change the basic principles of the 1926 Act was reasserted in hearings before the House Committee (p. 16, Hearings before The Committee on Interstate and Foreign Commerce, H. of Rep., 73d Cong., 2d Session on H. R. 7650), in the following language (italics ours):

"Commissioner Eastman: This Railway Labor Act has now been tried for a period of nearly 8 years. It has served a useful purpose and has brought about many good results, but experience has shown that it is in need of improvement. The bill before you, H. R. 9689, proposes such improvements. * * *

"Well this is the bill that I will talk about this morning. *This bill does not depart from the general principles of the Railway Labor Act, but instead is designed to reinforce those principles and provide for their more effective application.* It seeks not to overturn but to perfect what has been done."

George M. Harrison, chairman of the legislative committee of the Railway Labor Executives Association, appeared before the Senate Committee in support of S.3266 and made this statement regarding the intended effect of the 1934 amendments:

"The bill is designed to maintain substantially the same method as is now provided in the railway labor act for the adjustment of labor relations between the railroads and their employees. Our experiences, however, after 8 years of operation under that bill have brought us to the definite conclusion that, while its principles are sound, there is need of some amendments to clarify the language and to prevent certain unfair practices that have developed over that period of time."

(p. 28, Hearings before Senate Committee.)

Mr. Crosser prepared the majority report for the House Committee, recommending, with certain amendments, H. R. 9861. Speaking of the general purpose of the 1934 amendments, the report contains this statement (italics ours):

"*The bill does not introduce any new principles into the existing Railway Labor Act*, but it is designed to amend that act in order to correct the defects which have become evident as a result of 8 years of experience. It does not change the methods of conference, mediation, and voluntary arbitration to settle major disputes over wages and working conditions, which are provided in the Railway Labor Act of 1926, now in effect. * * *"

(p. 2, House Report No. 1944.)

Commissioner Joseph B. Eastman, George M. Harrison, and the majority report submitted by the House Committee are thus agreed in confirming the fact that the sponsors of the 1934 amendments did not intend to alter the basic principles of the 1926 Railway Labor Act. These assertions are of some significance, for the Congressional Record establishes that outlawing the right to strike and promulgating the policy of enforced arbitration of grievance disputes were not among the principles that the Con-

gress intended to incorporate in the Railway Labor Act of 1926.

The principal proponents of the 1934 amendments were agreed that the amendments were designed to overcome the primary defects in the 1926 Act. These defects were described by George M. Harrison in the following manner:

> "The main purposes to be accomplished by bill S.3266 may be divided into two sections. Fundamentally, the railway labor act was designed to provide machinery to aid the employees and their representatives and railway managements through conferences and negotiations to adjust such differences as may arise, with the provision of governmental assistance when the parties were unable to get together.
>
> "One of the fundamental principles underlying that procedure is, of course, that the representatives of the parties must be true and free representatives. Free to fairly and truly represent their respective interests.
>
> "The existing law, the railway labor act, provides that representatives for the purpose of the act shall be selected free of influence, or coercion exercised by either party over the selection of representatives by the other. I take it that that fundamental principle was put in the law because, subsequently it provides for machinery to reach decisions on controversies either through boards of adjustment or by arbitration, and it provides for the enforcement of those decisions in the courts. Since the decisions are enforceable in the courts, they must stand the test of having been arrived at by representatives that were free and truly representative, and many practices as I said, have developed, under that law which we feel are such that serious unrest and strife will develop in our industry unless they are corrected. * * * (P. 28)
>
> "Mr. Harrison: There were three boards. Three

sections of the country, western, northern and southern, nationally for three different groups of employees. Those boards functioned satisfactorily to the men. At the termination of Federal control, March 1, 1920, the employees sought to perpetuate that same arrangement of national boards of adjustment. The Transportation Act of 1920, which then took effect, provided that labor boards of adjustment should be established for the settlement of grievances, and it also set up the Railroad Labor Board. The organizations sought a conference with the railroad representatives in an effort to bring about the establishment of national boards. The railroads declined to set up national boards of adjustment and therefore compelled the men to take their cases to the United States Railroad Labor Board.

"The Board, of course, having many other major duties to perform in connection with wages and rules disputes, which were quite prevalent at that time, was overburdened in the handling of its work, and consequently it was somewhat delayed in making decisions on grievance cases. However, in the main, the functions of the United States Railroad Labor Board in the handling of grievance cases were satisfactory to the employee. The Labor Board got into many difficulties on other questions that caused the employees to feel that that act ought to be repealed and the Board abandoned. Following that, representatives of the employees and the carriers, through conferences, worked out this present railway labor act. In the present railway labor act, it provides for the establishment of a system of regional or national boards of adjustment, but the joker in the situation is that you cannot establish them unless you can get both parties to agree.

"Following the enactment of that law most of these organizations sought to set up regional boards of adjustment. Almost universally the railroads declined to establish regional boards of adjustment. As a re-

sult, many of the organizations and many of the railroads set up what we call system boards—that is, local to one system of railroad. Many of the organizations refused to set up a system board because of the impossibility of its functioning satisfactorily; but under the law we were unable to get to the Board of Mediation with our grievances unless they first passed through a board of adjustment. So many of the boards were set up just as a gateway to get to mediation.

"Now, this law is designed by the establishment of the national board—this bill, S.3266, is designed by the establishment of a national board to overcome our experiences and the difficulties that developed out of that situation. The language suggests first, that there shall be a national board established; that means that it is mandatory and it must be set up. * * * (P. 30)

"Mr. Harrison: So, when the grievance goes to the national board, they endeavor to reach a decision. Now, we feel that the parties should be given the greatest freedom and the greatest of opportunity to dispose of their disputes before outside assistance is brought in. Then the bill provides that should the parties—should the board be unable to reach a decision, that they then shall endeavor to mutually agree upon the selection of a neutral, and in the event they are unable to agree upon the selection of a neutral, the United States Board of Mediation which is an impartial governmental agency, shall appoint the neutral member. I may say that under the present act, should that similar condition develop in the selection of an arbitration board, the Board of Mediation makes the appointment of the arbitrators if the parties are unable to agree.

"Then we provided, in order to overcome our past experience, that the decision when made by the adjustment board shall be enforceable. We have had several instances where, even though the law provides that the agreement setting up the board shall provide

for the acceptance of the decision by the parties, that the decisions haven't been obeyed." * * *

"Now, I anticipate that the railroads will probably oppose the establishment of these national boards. The reason I recited the history of this board, was because I wanted the committee to understand that this has been a question for the last 14 years as to what kind of boards we are going to have to settle our grievances and our controversies that arise out of the agreements. We have always sought national boards; the railroads have always refused to set them up. They have sought the system boards, regional boards, and national boards, or group boards, and the entire experiences over that period of 14 years have shown that what the railroads insisted on having was not for the good of the industry, and it wouldn't work.

"Most of the boards that have been established under the present law have been unable to reach a decision. They have deadlocked on any number of cases. As a result of that there was fast growing up in our industry a serious condition that might very well develop into substantial interruption of interstate commerce, the very thing the law provided machinery to minimize. They probably say that the national board is far removed from the seat of the controversy. They probably will say that the national board will bog down. Well, now, I don't know anybody that has a greater interest in grievances being prosecuted than the man that originated the grievance. Grievances come about because the men file them themselves. Railroads don't institute grievances. Grievances are instituted against railroad officers' actions, and we are willing to take our chances with this national board because we believe, out of our experience, that the national board is the best and most efficient method of getting a determination of these many controversies that arise on these railroads between the officers and the employees.

"The Chairman: Now, will you explain—I suppose I ought to know this, but I don't—just what kind of controversy is to be settled by these boards, and what kind by the boards of mediation. I haven't got it clearly in my mind.

"Mr. Harrison: I will be glad to. Being so familiar with the law, I probably didn't go into that as thoroughly as I ought to. There are two classes of controversies that develop. One is what we call major changes, when we attempt to write a new contract or to revise a contract covering wages, rules, and working conditions.

"The Chairman: On all the railroad systems in the country?

"Mr. Harrison: That is right. Now, that is handled in this fashion: You have a conference with the officers of the railroad and endeavor to agree. If you are unable to agree then, either party has the privilege of invoking the aid and service of the United States Board of Mediation. The Board of—

"The Chairman (interposing): Will have under the law?

"Mr. Harrison: Yes; there is no change in that. Now, the other class of controversy is the disputes that arise out of the application of that agreement to the practical situation on the railroad. For instance, we may have a claim for time claiming that the rule of the contract should provide for the payment of so much. The railroad may dispute that and claim that they understand it to be another way. We may have a grievance concerning seniority of a man; we may have a grievance concerning the dismissal of a man, the promotion of a man, reduction of force. There are a thousand and one different kinds of controversies that can develop. Those are the controversies that will be settled by the national board. The parties in the first instance have agreed on the contract; they have laid down rules.

"The Chairman: Now, what is the difference between national board and local board of adjustment?

"Mr. Harrison: Local boards of adjustment are the same kind of boards as the national board, designed to handle the controversies on that one particular railroad. The national board will handle all the controversies developing in the country.

"The Chairman: Would the action of the local board be appealed to the national board?

"Mr. Harrison: No; we don't so comprehend in our suggestions.

"The Chairman: Do you have regional boards also?

"Mr. Harrison: No, sir. The situation is this, Senator: The bill provides in the first instance for the setting up of a national board. Now, we say to the parties: 'You don't need to use this national board if you can't agree with your men back home to set up a board in lieu of that national board.'

"The Chairman: That is a system board?

"Mr. Harrison: A system board, or a regional board, or a group board. 'If you do set it up, then you are exempt from the national board.'

"The Chairman: Are the decisions enforceable in the courts just the same as the national-board decisions?

"Mr. Harrison: We don't provide for that, but it is our intention and our purpose that such system boards, group boards, or regional boards that are established by the parties, by agreement, will provide such terms that the decisions can be enforced in the courts. The fact of the matter is the present law provides for that. It provides that decisions shall be final and binding and conclusive on the parties, and I think that kind of decisions can be enforced.

"The Chairman: Not unless there is specific authority, I think.

"Mr. Harrison: Well, we might very well provide for that, if the committee don't think it is covered.

"The Chairman: I just want to get this clear. Then the local and regional of the system board are voluntary?

"Mr. Harrison: They are voluntary.

"The Chairman: And if either party refuses, there is no way to compel them, and that matter would necessarily go to the National board?

"Mr. Harrison: That is right. In other words, we want to set up something that will be available, and hope that the parties will get together and establish something in its place.

"We have had experience for 14 years under these boards, and we hope that the committee will give us this national board, because if it is not approved and put into the law, we will be unable to work out satisfactory machinery by mutual agreement. The only reason we will be able to agree on other machinery is because we have this board set up by law that we can go to if we can't get an agreement on something else. It is a very troublesome problem and I just want to make this observation: These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.

"I just want to tie this tail on to that kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law, rather than what is suggested by this bill, then we don't want to give

up that right, because we only give up the right because we feel that we will get a measure of justice by this machinery that we suggest here.

"Going on from that national board—

"Senator Hatch (interposing): Before you leave that national board, if I understood you correctly, you believe that the setting up of the national board will cause the regional board to be set up?

"Mr. Harrison: Right.

"Senator Hatch: That is really what you want?

"Mr. Harrison: Some of the organizations want regional boards; some of the organizations probably will want a system board; some of the organizations will undoubtedly prefer the national board."

(pp. 32, 36, Hearings before Committee on Interstate Commerce on S.3266, 73d Cong., 2d Session.)

Coordinator Eastman discussed the results anticipated from the 1934 amendments concerning the process of settling grievances through adjustment board decisions, in the following language:

"Mr. Eastman: Another difficulty with the present law, even where an adjustment board has been established, is that, although its decisions are final and binding upon both parties, there can be no certainty that there will be a decision. The two sides are now evenly represented on these boards, and hence deadlocks are a very distinct possibility. Not only are they possible, but they have occurred in a large number of cases, and of late there has been a continually growing tendency toward such deadlocks. The number now existing runs into the hundreds.

"Because of the lack of adjustment boards in many situations and the tendency of those which do exist to deadlock, very disturbing conditions have at times been created, especially in recent months. In at least

four important instances, strike votes have been taken for the purpose of creating an emergency which would justify the President in appointing a fact-finding board, so that these grievances and similar controversies might be passed upon by an impartial body. In two of these instances the controversy was adjusted by the parties without the appointment of such a board, but in the two others fact-finding boards became necessary and were appointed.

"The bill before you, S.3266, attempts to remedy both of these deficiencies in the present law. It provides for the creation of a National Adjustment Board to which unadjusted 'disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions' may be enforced. Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted, through the process of mediation.

"Senator White: What is this quotation just immediately preceding taken from the 1926 Act?

"Mr. Eastman: S.3266.

"Senator White: That is taken from S.3266?

"Mr. Eastman: Yes.

"The National Adjustment Board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided between the two sides, disagree, they must call in a neutral member appointed by the Mediation Board to decide the case.

"I think that statement is in this respect in error. They can agree upon the neutral member, but if they do not agree he has to be appointed by the Mediation Board.

"The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill."

(p. 17, Hearings before Senate Committee.)

A substantially identical statement was made by Coordinator Eastman in hearings before the House Committee. (See p. 47, Hearings before House Committee.)

Another view regarding the amendments to the adjustment board provisions of the 1926 Act was given by the Coordinator at a later hearing before the Senate Committee, when the following statement was made:

"Mr. Eastman: Section 3: The railroads propose a substitute for all of section 3, which provides for a National Board of Adjustment. Before taking up the point of disagreement, it will be well to consider how far there is an agreement. Apparently it is agreed by all that the provision in the present act for boards of adjustment has been ineffective; (1) because the establishment of such boards has not been compulsory, and (2) because there has been no way to prevent deadlocks in those which have been set up. The employees want a National Board of Adjustment, divided into four sections, to be created definitely and certainly; and the railroads, as I understand them, are willing to have 16 regional boards of adjustment set up. Both parties are willing to permit system or other local boards of adjustment to be set up by agreement, so long as the arrangement is otherwise within the terms of the act. Both are willing to have neutral members appointed, and by the Mediation Board if necessary, in order to prevent deadlocks.

"If you should favor the regional board plan, the substitute Section 3 submitted by the railroads should, in my opinion, be entirely redrafted. As they have

presented it, I doubt whether the creation of the proposed regional boards could be enforced. The only possible method of enforcement would be by injunction, and the railroads' draft contains so many uncertainties, dependent upon agreement, that I do not believe that a court could find a firm basis for an injunction. I shall be glad, if it is desired, to submit a draft designed to make the creation of regional boards definite and certain, and also enforcible."

(pp. 152-153, Hearings before Senate Committee.)

Certain observations made by Samuel E. Winslow, Chairman of the United States Mediation Board under the 1926 Act, before the House Committee give an indication of his authoritative views regarding the deficiencies that the 1934 amendments were expected to overcome. These are as follows:

"Mr. Winslow: It so happens, to go back a bit, that the railway labor bill was proposed as a result of the turmoil of 1924. When the study of the labor bill had been begun, one of the early considerations was that of the basis on which employees and employers should proceed to set up some sort of an arrangement which would be fair and bring about the best continuing performance. I have been told by many representing both railroad executives and executives of the employee groups, that procedure in adjustment of disputes during the time of Federal control was such that the builders of the bill finally concluded that as a starting point they would try to build up a law on the principles of mediation and all that that meant and as is reflected in the Railway Labor Act—therein was the great inspiration and undertaking. * * *

"To my mind there are several outstanding things in this present bill which are worth attention. One

of them is the question of determining representation and all that is allied thereto. Another is the broad question of adjustment boards. Another is the question of abolishment of the Board of Mediation and setting up a new board to be called 'National Mediation Board.' * * *

"The next matter of real importance is the question, the broad question, of adjustment boards. * * *

"Our thought is that whatever else is done or not done in this law, the all-important thing is to fix up that adjustment board question in some way so that decisions will be made.

"There is another phase of it, however, I have not referred to, although I think it was rather suggested by one of the committee this morning bearing on those words 'final and binding.' The bill requires 'final and binding' may apply to all decisions of an adjustment board, and that seems easy, but it is not. In the early days of our work, with all good intent, we thought that if disputes went through an adjustment board and were decided, that was the end of it for us, and for everybody else, by law. Experience, however,—and I hope a progressive spirit—led us to feel that there is a certain type of cases which were simply thrown into the sewer and ought not to be so treated. Those are cases where an adjustment board decision had been rendered, supposed to be 'final and binding,' but when it was brought up as to application, one side disagreed as to how it was being applied or should be applied. Each side agreed that a decision should be final and binding but did not agree as to application, and there again you were nowhere. You could not get anywhere."

(pp. 69, 70, 72 and 73, Hearings before House Committee.)

The principal spokesman for the railroads in the hearings before the Senate Committee was M. W. Clement.

He expressed the carriers' views that opposed the proposal contained in Section 3 of S.3266 that a national adjustment board be established, in the following language:

"Mr. Clement: Men and management are agreed that what they want is compulsory, prompt, and equitable settlement of disputes. How is this best arrived at? None of the things proposed in this bill is new. We have had national boards, both in the boards of adjustment during the Government administration of railroads and in the United States Labor Board. We have had regional boards. We have had system boards. We have had Presidents' emergency boards, and we have had arbitration boards.

"The result of past experience is that the farther away from the property you go, the less satisfaction is brought to men, management, and the organizations. * * *

"The general experience with system boards is that men and management have agreed on a sort of compulsion, approaching questions with an honesty of purpose and disposing of cases currently.

"The Coordinator recommends that the experiment be tried. We do not believe that an experiment that has been tried in the past and found lacking should be tried again at the expense of the men. In other words, it is not right to jeopardize the rights of the employees by making an experiment which has been attempted before and which has failed.

"Based on a computation made by eastern region carriers, 75 percent of all grievances between employees and management have to do with local conditions on a particular carrier, or part of a carrier, under the working conditions that apply to that section, and it is impossible for any one national board or division thereof to be familiar with the different methods and practices in effect on all class I railroads of the country. * * *

"The Chairman: You are familiar with the complaints, that they can't get these boards appointed?

"Mr. Clement: When men and management sat down 8 years ago, neither side was willing to write into that act compulsion. We have experienced the act for 8 years, and both sides are now willing to sit down together and write in compulsion. That is the defect of the present act. * * *

"Therefore, based on past performance and experience, the railroads recommend an amendment to this portion of the bill; the amendment we propose will create regional boards, with compulsory decisions, prompt and equitable settlement of grievances, and provision for system boards or craft boards where desirable."

(pp. 67, 68, and 69, Hearings before Senate Committee.)

Mr. Clement also appeared before the House Committee and expressed the railroads' attitude toward the proposed amendments, in the following manner:

"Mr. Clement: The Railway Labor Act of 1926, with certain modifications, is nearly a perfect bill for the settlement of major troubles between men and management.

"If you will eliminate from this bill all those things which we believe will make for contention between men and management, and include only those things necessary to make this law compulsory in the spirit that it was originally written, correcting the two recognized defects—namely, (1) that on certain Railroads men and management have not observed the spirit of the law, and (2) failure of the law to provide machinery for the prompt disposal of matters in controversy referred to the boards that become deadlocked —all that is necessary is to change section 3 of the present law and make certain minor modifications in section 5.

"If this course is adopted, I cannot help but feel that you will assure men complete freedom of action in all ways, for collective bargaining, and concurrently assure to them prompt, equitable settlement of disputes, and assure the country against any interruption to commerce or to the operation of the carriers.

"I hand to the reporter a copy of the Railway Labor Act of 1926, with these modifications shown."

(pp. 139-140, Hearings before House Committee.)

The text of the Railway Labor Act as proposed by the carriers is reported on pages 140 to 149 of the hearings before the House Committee. It contains no provision suggesting that the right to strike over grievances is to be replaced by a policy of enforced settlement through arbitration procedure before adjustment boards or any other tribunals.

Another voice heard on behalf of the railroads was provided by John G. Walber, vice president of personnel of the New York Central Railroad. His summarizing observations were pointedly expressed to the House Committee as follows:

"Mr. Walber: There are two conditions which time has indicated might call for a change in the law. First, because on certain railroads the spirit and intent of the law have not been complied with; and, second, failure of the law to provide means for the prompt and conclusive disposal of matters of controversy referred to the boards of adjustment and which have become deadlocked. If provision is made for those two conditions, the defects which have been principally responsible for dissatisfaction will be corrected.

"The present law is clear and concise and has effectiveness in the fact that it definitely provides for the relations between managements and employees being

regulated by agreements freely negotiated. This principle is continued in H. R. 9689, but at the same time compulsion is superimposed on voluntary action. I have not thought that these principles could exist concurrently. It has appeared illogical to me to provide that it shall be the duty to make and maintain agreements, and in other provisions say that whether the interested parties want certain things or not, this is what will govern. The amendments proposed by this bill are ambiguous, difficult of interpretation, and attempt to provide by statute what should be accomplished by negotiation between the parties directly concerned.

"In my judgment, if the two objections which the representatives of the employees have advanced are taken care of, that is as far as there is any justification for change in the present Railway Labor Act, and on that account I subscribe to the two amendments which Mr. Clement introduced at the close of his testimony."

(pp. 153-154, Hearings before House Committee.)

The railroads' principal objections to the 1934 amendments were to the provisions of Section 2, which guarantee to the crafts complete freedom from interference by the railroads in the selecting of employees' representatives. The railroad also strongly opposed the substitution of one national adjustment board for many system or regional adjustment boards authorized by the 1926 act.

George M. Harrison was probably the most articulate spokesman on behalf of railway labor in urging the enactment of the 1934 amendments. His statements before the House Committee regarding the reasons why labor agreed to the establishment of a national adjustment board, and what labor expected of the board, are as follows:

"Mr. Harrison: When the Railway Labor Act was passed, the organizations, without exception, peti-

tioned the railway managements to establish regional boards of adjustment—one in the West, one in the East, one in the Southeast, for the various classes of employees.

"Without exception—yes, there was one exception—the railroads universally declined to establish that kind of machinery. They did, however, continue the regional boards that had been established with the transportation organizations, and today those regional boards represent about 60 railroads.

"The employees and the management then had no place to turn for the settlement of their general grievances, because the United States Board of Mediation took the position under the Railway Labor Act, that it could not give its services in the adjustment of grievances unless the grievances had passed through a board of adjustment.

"So, in order for the employees to progress their grievances, they were compelled to set up boards locally on each individual railroad system.

"The law provided that when and if such boards were established by agreement—and that was the joker in the law, they could not be established unless you agreed to establish them—that the representatives shall be equally divided between the management and the employees. So the natural result was secured. The boards deadlocked on practically everything of importance that was submitted to them, and as a result the grievances could not be disposed of.

"That, then, presented a very serious situation, because on some roads as many as 1,000 unadjusted disputes were in existence; and the condition got so unbearable that several of these organizations went to the extent of putting a strike ballot in the hands of their employees to leave the service of the carrier unless those controversies should be settled. That brought Presidential interference, by Executive order, and the establishment of emergency boards by Pres-

idential proclamation, and those boards undertook to bring about a disposition of the grievances.

"So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, if they desire to progress them, to be decided, by an adjustment board. * * * (p. 81.)

"When that decision is made, the law will provide that it shall be final and binding on the parties and enforceable in the courts, in substantially the same manner as the present law provides for the enforcement of arbitration awards, the extent that the court may go in issuing a mandatory process to compel observance of the decision on the grievance basis.

"Now, the bill provides that should any division in its discretion deem it necessary to establish a general board to take care of some of its work, then that should be done. Now, that is in there, because at the outset a difference of opinion grew up between the employees and the railway management about what was the best kind of a board to have, a national board, or a regional board, or a local board. Management was of the opinion that a regional board was the best. Some of the labor organizations thought probably that would do, but most of the organizations thought a national board was the most desirable kind of machinery.

"So that controversy has now been disposed of by the House bill, because any division of the national board will have authority, if this bill is passed, to set up a regional board. Then, it not being the purpose of the bill to supply machinery, if the parties can get

together themselves, the bill contains a provision that on any railroad or on any group of railroads the management and the employees might voluntarily agree on any other kind of a board for the settlement of their grievances, and if they do voluntarily agree on any other kind of a board, they shall be excluded from the jurisdiction of the national board or the regional board that is established under the power of a division of the national board; but in order to safeguard against the possibility of the parties making a mistake in the establishment of their voluntary machinery and it not working out properly, as they may anticipate, the bill provides that should any party become dissatisfied with such voluntary machinery as they may establish, that then on 90 days' notice they shall become subject to the national board and may take their disputes to the national board. * * *

"So, it cannot be said then that an employee will be unable to get consideration of his grievances just because he does not happen to be a member of the group representing the majority, because this bill is not designed to prevent the adjustment of grievance cases. The bill is designed to bring that very thing about. And that is what we hope will come about, because we believe that it is in the interest of our industry and we believe it is in the interest of the people of this country to maintain peace on these railroads and adjust our controversies in an enlightened and intelligent fashion."

(pp. 82-83, Hearings before House Committee.)

Some explanation of the changes proposed in regard to the establishment and the jurisdiction of the adjustment boards was made by the House Committee's majority report which recommended enactment of H. R. 9861. The author of this report was, as previously stated, Robert Crosser. The statement, in so far as relevant here, is as follows:

"The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as 'grievances,' which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions. The present Railway Labor Act provides for the establishment of boards of adjustment by agreement. In many instances, however, the carriers and the employees have been unable to reach agreements to establish such boards. Further, the present act provides that when and if such boards are established by agreement, the employees and the carriers shall be equally represented on the board.

"Most thousands of these disputes have been considered by boards established under the Railway Labor Act; but the boards have been unable to reach a majority decision, and so the proceedings have been deadlocked. These unadjusted disputes have become so numerous that on several occasions the employees have resorted to the issuance of strike ballots and threatened to interrupt interstate commerce in order to secure an adjustment. This has made it necessary for the President of the United States to intervene and establish an emergency board to investigate the controversies. This condition should be corrected in the interest of industrial peace and of uninterrupted transportation service. This bill, therefore, provides for the establishment of a national board of adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties."

(pp. 2-3, House Committee Report No. 1944.)

The minority report disapproved of H. R. 9861. The grounds of disapproval made no reference to the subject of strikes.

Majority and minority reports on S.3266 were sub-

mitted to the Senate, the former being prepared by Senator Dill and the latter by Senator Neely. Neither report contains any reference to the adoption by Congress of a no-strike policy, or the inauguration of a policy of enforced arbitration of grievances (Report 1127, 73d Cong., 2d Session, by Comm. on Interstate Commerce).

The right of employees to strike in connection with disputes based on grievances was the subject of specific comment on only two occasions before the House and Senate bills reached the floor of the Congress (aside from such reference to strikes as occurred in connection with a discussion of the language of the proviso contained in Section 2, Ninth, of the Act). One occasion was the submission of a brief to the House Committee by the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, in which the following statement appeared:

> "To the Honorable Sam Rayburn and members of the committee. * * *
>
> "We are unalterably opposed to paragraph M, starting on line 19, page 17 (referring to that portion of Section 3 of the Act which provides that awards rendered by the Adjustment Board shall be 'final and binding upon both parties'). This paragraph brings about compulsory arbitration and prevents the use of the only weapon in the hands of organized labor. We believe that a very dangerous precedent would be established with the passage of this paragraph, and to the best of our knowledge it is the first time that any such measure has been enacted by the Congress of the United States. Labor has the right to use the economic strength of their organizations to bring about a betterment of wages and working conditions for the workers of the United States, but with the

passage of this paragraph into law that economic force and strength is taken away.

"It was argued by some in this hearing that individual members had the right to quit their employment at any time. While that right is not denied the individual, it is denied the members of the union collectively, and leaves the way open to the courts to enjoin by injunction organizations, their officers and their members, for striking against a decision of a board of mediation which they did not favor. If it is the intent and purpose to formulate boards of mediation or conciliation, there is no serious objection, but they should be used as specified in the law for conciliation and not for arbitration. Arbitration should be definitely left to the judgment of both sides to the dispute, by which they have a right, as they have today, to voluntarily submit a controversy to arbitration and by that process to agree in individual cases to accept the decision of the arbitrator as being final and binding on both sides. That is something that may be accomplished by agreement, but we believe it to be very unfair to make it a matter of law, which will compel arbitration on both sides under penalty of law.

"While it is argued that individuals have the right to quit, is it not fair to assume that if more than one individual should quit his employment at the same time there was a conspiracy among them to defeat the purposes of a decision rendered by a board of arbitration to which they did not desire to contribute. We believe that this paragraph is an injury to the organized workers of this country."

(pp. 116 to 118, Hearings before House Committee on H. R. 7650.)

Of course the Teamsters' Brotherhood does not function as an employees' representative subject to the Railway Labor Act.

The question whether the right to strike over grievances would be outlawed by the 1934 amendment became the subject of a colloquy only once during all of the official discussions of the three bills prior to the enactment of the 1934 amendments. This colloquy took place before the House Committee. It began with a discussion as to what would be the effect of the words "final and binding" in Section 3 (m) on the right to strike, as follows:

"Mr. Pettengill: Mr. Chairman, may I ask a question?

"The Chairman: Mr. Pettengill.

"Mr. Pettengill: Mr. Eastman, at the bottom of page 17, it says that the award shall be final and binding upon both parties to the dispute, excepting insofar as they shall contain a money award.

"Is it your interpretation that that language, by implication or argument, would make a strike unlawful?

"Commissioner Eastman: That is the same language which, as I recall it, is in the present act with reference to decisions of boards of adjustment on grievances. The present act also provides that if the parties agree to arbitration of a major issue, then the decision of the board of arbitration shall be final and conclusive.

"Now, the only difference here is that there is provision for preventing deadlocks on an adjustment board by the appointment of a neutral member.

"Mr. Pettengill: And, this act does not make a matter of agreeing to arbitrate a matter of discretion? It makes it a matter of duty on the part of the parties to this dispute.

"Commissioner Eastman: Yes; and it is my understanding that the employees in the case of these minor grievances—and that is all that can be dealt

with by the adjustment board—are entirely agreeable to those provisions of the law.

"I think that is a very important concession on their part. It does not go to the major issues with reference to wages and working rules; but to all disputes except working rules and wages.

"Mr. Pettengill: Well, does it not apparently make binding the award on all matters except insofar as they pertain to wages?

"Commissioner Eastman: The only jurisdiction that the adjustment board has is over these minor grievances."

(p. 58, Hearings before House Committee.)

The significant part of the aforegoing discussion is the statement by Commissioner Eastman that the only difference between the 1926 and 1934 Acts in respect to the subject under discussion is that the functioning of the Adjustment Board would no longer be dependent on an agreement between the parties. From this it appears that Commissioner Eastman did not believe that the 1934 Act curtailed the right to strike any more than did the 1926 Act where grievances were the cause of dispute. Commissioner Eastman and Congressman Pettengill were agreed that the important change made by the 1934 amendments was that under the new law one party to a dispute could no longer prevent the other party from submitting their disputes to an adjustment board for decision by the simple process of refusing to agree to the establishment of an adjustment board. We have already noted that, according to the record of Congressional action bearing upon the 1926 Act, the only limitation imposed on the right to strike was the "*status quo*" provision in Section 10, which came into operation after the President appointed an emergency board.

Congressman Pettengill then expressed the view that he would not approve the adoption of a bill that would take from employees the right to strike:

> "Mr. Pettengill: Well, I know that we all indulge the hope that matters as important to the public as uninterrupted train service shall not be interrupted if possible and that means shall be provided so that those strikes may not happen; but I am not prepared to go (so) far as to say that labor shall, by law, be required to abandon that ancient weapon which has been recognized by the United States Supreme Court over and over again.
>
> "Mr. Wolverton: Is that not provided for in the proviso to Section 2 reading:
>
> > "Provided, That nothing in this act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this act, be construed to make the quitting of his labor by any individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.
>
> "It would seem as though this provision would cover the thought you have in mind" (p. 58).

Senator Pettengill then appears to express the belief that once a grievance is submitted to the adjustment board the employee must be held to have consented to the authority of the board, which is to say, that he has consented to relinquish the right to strike. But the further thought appears to be held by Congressmen Pettengill and Wolverton that this result is not inconsistent with the conclusion that "there is nothing in this bill that calls for compulsory arbitration." The colloquy on this point went as follows:

"Mr. Pettengill: Well, when he has joined an organization and has selected a representative and the representative has submitted an award, then he has consented to it, has he not?

"Mr. Wolverton: Theoretically I would say yes; but I understood you to go beyond that in making your inquiry. Mr. Eastman yesterday seemed to be of the opinion that there is nothing in this bill that calls for compulsory arbitration or that could be taken to enforce a decree against a labor union. They would still have the right to strike.

"Mr. Pettengill: That is the question that I am raising. I do not want to take the time this morning.

"Mr. Merritt: Any consent under this bill must be subject to that provision; that is, concerned with the proviso on page 10.

"Mr. Wolverton: I have merely expressed the impression I received from the statement made by Mr. Eastman yesterday. I may be wrong in that.

"Commissioner Eastman: Well, I was talking yesterday about a dispute which arises as to who is the representative of a particular group of employees.

"Mr. Wolverton: Yes.

"Commissioner Eastman: Now, that is the provision in paragraph 9 in Section 2.

"Mr. Wolverton: Yes" (pp. 58-59).

Mr. Eastman then elaborated at length on this idea, as follows:

"Commissioner Eastman: In my answer to you I said there was nothing in the act which provided for the enforcement of those particular decisions. That answer would not apply to decisions of the adjustment board, and they are made final and binding by the terms of this act, and as I understand it, the labor

organizations, none of them, are objecting to that provision. They have their day in court and they have their members on the adjustment board, and if an agreement cannot be reached between the parties representing both sides on the adjustment board, a neutral man steps in and renders the decision, and they will be required to accept that decision when made, with respect to these minor matters. They are not the major issues which arise in the labor world. It has to do with the settlement of these grievances. Page 16 defines the disputes which are to be referred.

> The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.

"Now, the proviso on page 10 protects the individual who wants to walk out but it does not cover collective action in walking out.

"Mr. Pettengill: Your interpretation there, Mr. Commissioner, would be that under the language at the bottom of page 17, although the individual may be free to walk out, the organization would not be free to call a strike after an award had been made on these matters that are covered by the language at the bottom of page 17.

"Commissioner Eastman: Well, that is my understanding; yes, sir.

"Mr. Cooper: Mr. Pettengill, what would be the use of having these boards if both parties do not abide by their decisions?

"Mr. Pettengill: I am not arguing the point, Mr. Cooper. I am just asking for the interpretation of the Commissioner of his understanding of the law, and if it is his interpretation that it does make a strike illegal.

"Mr. Cooper: I cannot see the sense of going ahead and setting up boards and have the carriers and employees go before these boards, if they do not agree to abide by the decision of the board and the neutral member that may be brought in" (p. 59).

The colloquy then digressed to a discussion of the meaning of the proviso in Section 2, Ninth, of the Act, as follows:

"Mr. Lea: Under that proviso, in the tenth subdivision, do you take it that that draws a distinction between an individual quitting his employment and the employees agreeing collectively to quit?

"Commissioner Eastman: Yes, sir. As I recall that, in the original form it was in, it had something about collective action and it was changed to this language which is the language in the present railway labor act. It is the same proviso as is in the law now.

"Mr. Lea: The emergency act made collective action the same, or put it on the same basis as individual action, did it not? It placed collective action on the same basis as individual action in quitting employment.

"Commissioner Eastman: I do not recall that there was anything in it. Well, there was something in the emergency act about that; yes, sir. The proviso in the emergency act is:

> Provided, That nothing in this title shall be construed to require any employee or officer or any carrier to render labor or service without his consent or to authorize the issuance of any orders requiring such service, or to make illegal the failure or refusal of any employee individually, or any number of employees collectively, to render labor or services.

"Now, of course they were not dealing in this with the settlement of disputes between the carriers and the employees. The question was whether the Co-ordinator could order certain employees to keep on working" (p. 60).

Congressman Cooper then brought the discussion back to the question whether an adjustment board award would be truly binding on the employees, as follows:

"Mr. Cooper: Mr. Chairman, may I ask the Commissioner just one more question, because I want to get this thing very clear?

"The Chairman: Yes.

"Mr. Cooper: Do I understand this paragraph then on page 17, in which it says, 'the awards shall be final and binding upon both parties to disputes,' would that prevent a railroad employee or an organization from striking, if they saw fit? Would it be a violation of the law if they did that?

"Mr. Pettengill: Could an injunction issue to prevent them from doing it?

"Commissioner Eastman: I cannot tell you what the legal procedures would be in enforcing the award, where it is against the employee. Paragraph (p) covers the case where a carrier does not comply with the order of the adjustment board.

"Mr. Cooper: Would it apply to either carrier and/or employees? Now, if we go that far are we not writing something new into the law of the land to deprive the employees of rights which they already had?

"Commissioner Eastman: Well, as I say, you have exactly similar provisions in the present labor act with respect to decisions by adjustment boards and where they agree to arbitration and this law is in effect an agreement on the part of the parties to arbitrate all of these minor disputes.

"The Chairman: Was that not one of the reasons to try to keep down strikes to get people together?

"Commissioner Eastman: Yes. It is a very important part of it. The willingness of the employees to agree to a provision of that sort seemed to me to be a very important and praiseworthy thing.

"Mr. Cooper: Well, I fully approve of that method, Mr. Commissioner, and I say that if they are going into these boards and are willing to go in there, why probably they ought to abide by the finding of the board; but I do not know whether I would want to go so far as to say that if they do not agree to it that it would be a violation of law.

"Mr. Wolverton: Does this act in any way, Mr. Eastman, provide that it will be a violation of law if they do not comply with the decree and the order that is made?

"Commissioner Eastman: It says that the award shall be final and binding.

"Mr. Wolverton: Does this bill attempt in any way to enforce that provision; and if so, is it contrary to public policy to put such a provision in the bill?

"Commissioner Eastman: Page 19, line 19, it says:

> The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the adjustment board.

"Mr. Wolverton: Is there any provision in this bill that would enable the court to obtain an injunction against a labor organization which is dissatisfied with the final decree and refuses to comply with it?

"Commissioner Eastman: Well, I am not able to give you an answer to that. That is a legal question, to be frank with you, that I have not gone into.

"Mr. Wolverton: It would seem to me that the provisions or language of the bill itself would answer that question. And is it contrary to public policy to have such a provision in there?

"Commissioner Eastman: Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues.

"Mr. Wolverton: The provision which I read a few moments ago protects the individual employee so that no court can order him to work, and no court can issue an injunction preventing him from striking nor in any way prevent the free exercise of his own individual discretion as to whether he shall work or not work.

"Is there any language that is equally clear with respect to the organizations? I understood you are not certain that the language would apply to any other than an individual.

"Commissioner Eastman: Well, I think that the carrier can enforce the order. For instance, if the order provides that certain working rules shall be interpreted in the same way, the carrier, of course, can apply the rule in that way.

"Now, the only question I am in doubt about is whether or not there should be an injunction under this act to prevent a strike. Now, I am not clear about that.

"Mr. Wolverton: Do you think that there should be such a provision in the bill?

"Commissioner Eastman: I would rather see it carried out without that, because I do not believe you are going to have that question arise.

"Mr. Wolverton: Do you consider it better policy to leave it out—

"Commissioner Eastman: Well, no particular

question has been raised about this matter of enforcement" (pp. 60-61).

Commissioner Eastman, it will be observed, while holding the opinion that all parties should consider a grievance as put at rest by an adjustment board award, yet he frankly acknowledged that no consideration had been given to the question whether under the language of the bill a court of equity would be authorized to issue an injunction compelling employees to abide by an adjustment board award.

The Congressmen then became anxious to know precisely what the proponents of the amendments had intended on the question whether employees were to be forbidden by the law to strike over grievances. Commissioner Eastman suggested that the Congressmen question Commissioner Eastman's legal adviser, a Mr. Carmalt. The colloquy continued as follows:

"Mr. Wolverton: Let us first have a frank understanding as to whether it is included or is not included in the bill and then we can determine the policy as to whether it should be or should not be in the bill; but it certainly seems to me that the bill ought not to be left indefinite either from the standpoint of the carriers or the standpoint of the employees. We should know just what the situation is.

"Commissioner Eastman: I think I would prefer that my legal adviser, Mr. Carmalt, who has been working on this bill for me, be asked that question. If you will ask him what he thinks about that.

"Mr. Carmalt: It seems to me at least arguable that a strike might be enjoined under the provisions of this law, that is to say, a strike called because of failure to comply with an adverse decision of the judgment of the Board in favor of the carriers against the employees.

"Mr. Wolverton: How would an injunction of that kind be directed—to the officers of the organization or the membership?

"Mr. Carmalt: To the employees, I take it.

"Mr. Pettengill: Well, may I ask a question?

"Mr. Chairman: Yes, Mr. Pettengill.

"Mr. Pettengill: You say that you take it that it is arguable that an injunction might issue to enforce the award, and would not that injunction then be binding upon every individual if a member of an organization that had participated in the hearing?

"Mr. Carmalt: Well, Mr. Pettengill—

"Mr. Pettengill: What is the use of an injunction directed against some names, unless it includes the members of the organization and would not make nugatory the exemptions at the bottom of page 10, which attempts to protect the individual?

"Mr. Carmalt: That clearly means individuals in case of the grievances, and the injunctions, I should take it, would run against the individuals who were the claimants.

"Mr. Cooper: Well, in that respect, Mr. Pettengill, there may be 10,000 individuals involved in the particular controversy.

"Mr. Pettengill: That is correct.

"Mr. Cooper: So it seems to me that an injunction would apply to all of those connected with that part of the railroad work which was being arbitrated.

"Mr. Wolverton: Was it the purpose in this act to confer the right to enjoin an organization from disputing a decision made by the Board?

"Mr. Carmalt: The original House bill on this question, was drawn by the employees and the language was, I think, brought directly over in the same form that the employees presented it.

"The question has not arisen therefore, before this morning, and I am more or less thinking out loud in connection with it, because of that fact, but it has seemed to me that the implication lay, from the form of the bill, that a strike on account of these minor grievances would not be permitted and might be enjoined.

"Now, as to against whom the process should run, I have not thought it through; but presumably it would run against anybody that was endeavoring to make nugatory findings of the Board.

"Mr. Wolverton: There is no doubt in your mind that the provisions of the bill are broad enough to take any kind of action against a carrier to compel, either by injunction or mandamus, its compliance with an order that has been made; is that right?

"Mr. Carmalt: That is right.

"Mr. Wolverton: Now, does the same power exist with respect to the other parties? Has this question been left open purposely, or has it been overlooked, or what has been the policy in the drawing of the bill?

"Mr. Carmalt: No. It was felt there were individual grievances involved, that the carrier had the power in its hands to enforce the awards of the Board as against the individual; that is, the individual judgments that are rendered by the Board.

"Now, the question of strikes had not arisen in connection with it until this morning" (pp. 62-63).

It will be noted that Mr. Carmalt firmly stated that the question had not been specifically considered by the sponsors of the amendments; that it had come up for discussion for the first time that morning.

Congressman Wolverton then pushed Mr. Carmalt into giving an expression of his personal opinion whether the bill as ultimately adopted should authorize the use of

injunction if such were needed to compel employees to abide by adjustment board awards. Mr. Carmalt expressed the opinion that the law should so provide, but at the same time he reasserted the fact that the sponsors of the amendments had not previously discussed the idea of authorizing the issuance of an injunction to prevent strikes in the event employees were dissatisfied with an award by the adjustment board. The colloquy went as follows:

"Mr. Wolverton: Is it your opinion that there should be such a provision in the bill or not?

"Mr. Carmalt: I hesitate to talk, effecting a policy in that regard—

"Mr. Wolverton: I am only asking you to express your opinion.

"Mr. Carmalt: My opinion is that there should not be the right to strike over grievances of this kind where the Government has provided the machinery whereby the grievances may be considered by an impartial board.

"Mr. Wolverton: Do you think that the language that has been referred to by Mr. Eastman, as conferring this absolution, so to speak, so far as an employee is concerned, would provide equal protection to the organization itself?

"Mr. Carmalt: No; I think this injunction would run, rather as against a strike. There is no other means of resisting the order. But, as to the individual quitting, I think the absolution would be effective.

"Mr. Wolverton: Do you think that the absolution that has been given the employee should likewise be given to the organization?

"Mr. Carmalt: Oh, no.

"Mr. Wolverton: What?

"Mr. Carmalt: No.

"Mr. Wolverton: What did you say?

"Mr. Carmalt: No. The employees, in their drafting of the bill, put that absolution in, and in redrafting the bill we took the language of the present act which would not give that absolution to the organization.

"Mr. Wolverton: So then you assume that under the provisions of this bill an injunction could issue to prevent an organization from going on strike?

"Mr. Carmalt: Such an injunctive process as might be necessary to prevent the strike growing out of the settlement of grievances under section 3, I should believe would lie.

"Mr. Wolverton: Then the bill has been drawn purposely so that it would have that effect, so far as the organization is concerned but not so far as the individual is concerned?

"Mr. Carmalt: I would not say that it gives any authority in that regard, because it was assumed that would be true, I think, but there has been no discussion of it until this morning" (p. 63).

The discussion of the right to strike was concluded by the following statements:

"Commissioner Eastman: I may say, so far as I am concerned, it had not seemed to me that matter was a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances, particularly when they had been passed upon by an impartial tribunal under Government auspices.

"It is a serious enough thing to strike when a major matter is involved; but when you have only minor grievances and they have had full opportunity to be heard and have had their day in court before a tribunal, it hardly seemed to me that that was a question that was likely to arise. My own idea would be, let that question arise out of experience and find out whether there is actual need for any such power be-

fore you provide for issuing injunctions for preventing strikes.

"Mr. Wolverton: Mr. Commissioner, that may be true. Maybe that is a proper course to pursue, but what I am seeking to find out is whether this language declares something else to be the policy.

"Commissioner Eastman: Yes.

"Mr. Wolverton: And I am endeavoring to find out just what that language of this bill does provide, so that we may know what policy we are adopting. It may be that a hands-off policy is what we should adopt, but in that case, I do not want to see something in the bill that carries a different effect. That is the purpose of my questions, in trying to find out definitely what is the purpose or effect of the provisions in this bill.

"Commissioner Eastman: I shall be glad to give the matter study and let you know just what my opinion is upon it" (pp. 63-64).

The subject of the right to strike to enforce grievances was not brought up again before the House Committee, and it was not discussed in hearings before Senate Committee, nor was it referred to in the course of debates on the floor of the Senate and the House of Representatives.

The several proponents of the 1934 amendments repeatedly stated that the only substantial changes they intended to make in Section 3 of the 1926 Act was to remove the establishment of adjustment boards from the realm of agreement to the realm of certainty, and to provide for a neutral participant to sit with the adjustment board for the purpose of breaking deadlocks over decisions on grievances.

It therefore appears certain that the Congressmen who participated in the deliberations preceding the enactment of the 1934 amendments to the Railway Labor Act

were not themselves aware that the amendments would curtail the right to strike over grievances *prior* to the time that the grievances were submitted by one of the disputants to the adjustment board.

4. Section 10 and Section 3, Second, 1934 Amendments.

Before concluding this review of the legislative history, some comment should be made on two provisions of the 1934 amendments that have to this point in the memorandum been largely neglected. Attention to these provisions is advisable because these provisions of the law do contain reference to the subject of strikes, and the purpose of this memorandum is to accurately present all of that part of the legislative history which appears to have any bearing upon the subject of strikes.

One of these provisions is section 10 of the Act, which imposes a limited restriction on the right to strike following the appointment of an emergency board by the President. Commissioner Eastman gave a lucid explanation of this change from the 1926 Act and his explanation is undisputed in the record. It follows:

> "Commissioner Eastman: Now, that is all I care at this time to say in regard to section 3.
>
> "I come now to the last salient feature of the bill, in section 4, which provides for the reorganization of the present United States Board of Mediation into a National Mediation Board. Let me at the outset say that, considering the handicaps under which the present board has labored, and by handicaps I mean the provisions in the act which lay down certain principles without providing a means for enforcing them, considering those handicaps, I think that in many respects it has done a very good job. It has endeavored to hold the scales even and to administer the provisions of the act wisely. I think the present

chairman is entitled to much credit, and you will hear from him this morning.

"It is thought, however, and I think he agrees with this, that the present board may well be made more compact, by reduction from a membership of 5 to a membership of 3. If the National Adjustment Board is created the National Mediation Board is likely to be relieved of what is now a comparatively large number of minor cases, and will be able to concentrate upon the major cases of substantial national importance which deal with wages, hours of employment, and not with grievances. Three first-class men can do this as well as or better than five, and the tendency should be to magnify the importance of the work and secure appointment of men of the best possible type.

"The present machinery for mediation and possible arbitration and for the final appointment of a fact-finding board are left largely unchanged. I call your special attention, however, to a change which appears in the first paragraph of section 5. This provides that the Mediation Board, in the event that its mediatory efforts fail, shall notify both parties in writing to this effect, the prevailing rates of pay, rules, and working conditions, however, to remain *in status quo* for 30 days thereafter. As the present act reads, a railroad, by rejecting the Board of Mediation's final recommendation to arbitrate the dispute, is enabled to change the rates of pay, rules, or working conditions arbitrarily, prior to the issuance of an order by the President appointing a fact-finding board and maintaining the *status quo* for 60 days.

"It is provided, you will recall, that when the President appoints a fact-finding board both parties must remain *in status quo* for 60 days. The only way the employees can now guard against this possibility is for them to be forehanded and arm themselves with a strike vote prior to the termination of medi-

ation. This is obviously a very unsatisfactory expedient, but it does enable the Board of Mediation to certify to the President that an interruption to interstate commerce threatens, thus enabling him in turn to issue an Executive order before the railroad can change the *status quo*. The railroads have taken advantage of this unintentional hiatus in the present law in several instances. The change now proposed is designed to plug this hole."

(p. 24, Hearings before Senate Committee.)

The other provision referred to that received considerable attention was the proviso in Section 2, Tenth, of the original S.3266, which reads as follows:

"*Provided*, That nothing in this Act shall be construed to require any employee or any officer of any carrier to render labor or service without his consent or to authorize the issuance of any orders requiring such service or to make illegal the failure or refusal of any employee individually *or any number of employees collectively* to render labor or service" (Last italics ours).

This language was criticized by Commissioner Eastman before the Senate Committee, in the following vein:

"Mr. Eastman: Now that, in my judgment, is too broad, and the language in the present Railway Labor Act ought to be substituted, which would read as follows:

'Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act, nor shall any court issue any process to compel the performance by individual employees of such labor or service, without his consent.'

"That is the language in the present act.

"What is now in the bill goes a little beyond that by speaking of a number of employees collectively, and the act is intended to prohibit strikes under certain circumstances, for example, the 60 days during which the fact-finding board is to act."

(p. 24, Hearings before Senate Committee.)

The proviso as contained in the 1926 Act was the subject of considerable attention in the hearings held by the Senate Committee on Interstate Commerce in 1926 because as this proviso originally appeared in S.2306 it was subject to the interpretation that it specifically confirmed the rights of employees to strike at all times, including the period that an emergency board might be sitting. The railroads' representatives contended that the proviso and the *status quo* requirement under the emergency board section of the Act were in direct conflict. Commissioner Eastman deprecated the idea that the proviso would be so interpreted, but he ultimately agreed that the proviso be changed to emphasize the individual's right to quit work and that it did not extend to collective action and override the requirement that the *status quo* be maintained during the functioning of an emergency board (See pp. 62-63, 90, 144, 201-207, hearings before Senate Committee on Interstate Commerce, 69 Cong., 1st Sess., S.2306).

The proviso in S.3266 was also criticized by Mr. Clement, Chairman of the Committee of the Railroads. He referred to it while explaining to the Senate Committee the railroads' several proposed changes in S.3266. His statement is as follows:

"The last paragraph of the bill should be modified by omitting the words '*or any number of employees collectively*' in lines 4 and 5, page 10. As this paragraph now stands, it attempts to legalize

> strikes—yet we are here with the view of preventing interruptions to transportation" (p. 66, Hearings before Senate Committee).

Mr. Clement's statement is, of course, ambiguous. In view of the tenor of the other testimony presented to the Committee and of Mr. Clement's criticism of the shortcoming of the 1926 Act; it would not be reasonable to assume that Mr. Clement intended by his suggested change of the proviso, to generally prohibit the right of railway employees to strike.

The corresponding proviso appearing in H. R. 7650 and in H. R. 9689 was substantially the same as the proviso in the 1926 Act. When the bills reached the floor of Congress the proviso in S.3266 was amended to conform to the proviso in the 1926 Act (Congressional Record, 73rd Cong., 2d Session, p. 12385).

The record of discussion of the bills on the floors of the House and the Senate throw no additional light on the subject under consideration, with the exception of the following colloquy recorded at p. 11713 and p. 11716, respectively of the Congressional Record;

> "Mr. Sabath: This bill attempts to make the Act of 1926 workable and effective; is not that about all?
>
> "Mr. Crosser of Ohio: That is all. All this bill does is to make the Act of 1926 more workable.
>
> * * * * *
>
> "Mr. Kenney (speaking in support of the bill): A method is provided by the present bill so that all disputes may be settled peaceably and labor will not be compelled to strike to enforce its claims."

This memorandum will be concluded by a reference to Section 3, Second, of the 1934 Act, which provision has some bearing upon the problem under consideration. If

the courts were to hold that the right to strike in support of grievances was taken from railway labor by the enactment of the 1934 amendments, such decision must be premised largely on the reasoning that the establishment of a national adjustment board, to which either the carrier or its employees may refer disputes, and the decisions of the board being made "final and binding" and subject to enforcement in the courts, constitutes a system of compulsory arbitration. Of course, the establishment of a system of compulsory arbitration is incompatible with the notion that employees may resort to the power of strikes to compel settlement of their grievances.

Now Section 3, Second, it should be noted, is available to carriers and their employees as a *substitute* for the jurisdiction of the national adjustment board under Section 3, First. This provision of the law reads as follows:

> "Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatified with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Section 3, Second, completely omits any specifications regarding the make-up and the powers of system or regional boards of adjustment, or the effect that decisions by such system or regional boards of adjustment may have. These characteristics have been left wholly to agreement between the parties. The degree to which the decisions of

such tribunals may be final, binding or conclusive, and also whether they may be enforced by the courts, depends upon the terms of the agreement arrived at by the parties.

The considerations and reasoning based upon Section 3, First, of the Act, upon which courts must predicate the conclusion (if they arrive at such conclusion) that compulsory arbitration of labor disputes was substituted by the Congress for strikes as a means of settling grievances, can be completely nullified at the will of any carrier and its employees simply by agreeing to the establishment of some form of system or regional board of adjustment under Section 3, Second, of the Act.

The fact that the effect of regional or adjustment board decisions was left entirely to the decision of the parties by which these boards might be established was clearly explained by George M. Harrison while he was discussing the purpose of Section 3, Second, before the House Committee, as follows:

> "Mr. Cooper: I was going to ask you this some time ago when you mentioned that to us.
>
> "My question is, when the voluntary boards are set up and they come to a conclusion or an agreement, is that binding on the parties?
>
> "Mr. Harrison: Well, that, Mr. Cooper, that would all depend, in my opinion, on the conditions and terms of the agreement setting up such voluntary machinery. This bill does not so deal with the situation. We leave that to the parties. Now, under the present law we have agreements, set up local machinery, which may be considered comparable to what this will provide, to be established if they want to establish it; but in the agreements establishing the voluntary machinery, there shall be a provision to make final and binding and conclusive on the parties the decisions made by such machinery and the parties shall in good faith

abide by such decisions. I know—my opinion is, regardless of a specific provision in the law, that if you had a contract made by true and legal representatives set up by such voluntary machinery, you could go into court and enforce the terms of that contract. I am not an attorney, but I base that on experience that we have had, because some of these local boards have made decisions and managements have refused to respect them, and when court action was threatened, we generally got the terms of the contract obeyed.

"But, we thought that should be entirely left to the parties, because we want to give them freedom in the first instance to set up any kind of machinery they want and if they cannot set up machinery then this machinery will be there. In other words, if I may express it in the vernacular, it is a fire department to settle disputes. We hope the parties will get together and settle their disputes without the need or use of this machinery, and it is a fire department for the purpose of settlement.

"Mr. Cooper: Of course, as a natural consequence if the two parties are meeting voluntarily to settle disputes, if they come to an agreement, naturally it will probably be lived up to.

"Mr. Harrison: That is the end of it. We hope that it will.

"Mr. Cooper: Yes."

(pp. 88-89, Hearings before House Committee.)

While hearings were being held by the Senate Committee on S.3266, a Mr. D. F. Todd appeared before the Committee and made a very short statement. Mr. Todd's position was that of assistant chairman of the Association of Clerical Employees of the Santa Fe Railway. Mr. Todd had one substantial request to make of the Committee. This request was, that Section 3, Second, be amended by adding a proviso which would read as follows:

"Provided, however, the provisions of paragraphs (i), (j), (k), (l), (m), (n), (o), (p), and (q), of this section of the act shall govern and control where system and/or regional boards of adjustment are agreed upon as the machinery for the handling and/or settlement of disputes in lieu of the national board of adjustment."

The significance of this suggestion is obvious, but it did not obtain favorable reception by the Senate Committee.

The views of Commissioner Eastman regarding the reasons for including Section 3, Second, as an alternate means available to carriers and their employees for resolving grievances was explained to the House Committee in the following manner:

"That (Section 3, Second) will have this effect: The theory behind these so-called 'company unions,' confined to a single system, is that it is the better way of adjusting the relationship between employers and employees, to have a local unit of this character which can deal intimately at close range with the management and without bringing in national officers. If the employees decide that is what they want, as they have a right to decide under this bill, they can set it up and they can also agree with the management upon such a settlement of disputes as they see fit to agree upon. That is all provided for in this paragraph."

(p. 49, House Committee Hearings.)

EXTRACTS FROM SENATE COMMITTEE HEARINGS ON S.3463 (DONNELL BILL) TO AMEND RAILWAY LABOR ACT.

Statement of George M. Harrison, Grand President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

* * * * *

At the outset, I want to extend the appreciation of our member organizations to your honorable committee for this opportunity to present our views with respect to S. 3463. We believe that it is dangerous legislation, conceived in stress and hysteria, and that its enactment would ruin the work of over a half century in the field of railroad labor relations. A dispassionate analysis of the operation of the Railway Labor Act reveals nothing that warrants the drastic and unwise changes proposed in this bill. It is our considered judgment that it would serve to increase labor strife rather than reduce it, and, since we feel that it is contrary to the very principles of freedom on which our country was founded, we are unalterably opposed to its enactment.

We were very much surprised to learn that the railroad managements are proponents of S. 3463. We consider their support of this legislation without prior consultation with representatives of labor is an unfortunate violation of a long-standing agreement, between railroad managements and labor, that each would confer with the other whenever either side wished to seek changes in the Railway Labor Act. This agreement has been scrupulously observed until this time. The first we learned of the carriers' part, in advocating this revolutionary proposal to amend the act, was the disclosure on the opening day of the hearing on this bill that it was the product of collabora-

tion between certain representatives of railroad management and the honorable Senator from Missouri.

Bill S. 3463 outlaws strikes and provides for compulsory arbitration. We are astonished at the arguments which have been advanced by its proponents and can only conclude that railroad managements have hoisted the white flag, in their crusade for competitive private enterprise, and surrendered to the principles of totalitarianism.

Mr. Ludwig Teller, a recognized authority on labor relations and by no means a prolabor author, in his book entitled "Management Functions Under Collective Bargaining" says:[1]

> The right to strike and to engage in other lawful forms of concerted labor activity are closely identified with the meaning and destiny of a society of free men. But unions are not the only opponents of compulsory arbitration. Management circles are often just as adamant in their opposition to compulsory arbitration, for it is realized that the Government may seek to substitute its judgment for that of management in connection with the exercise of its essential functions (p. 327).

Mr. Teller then goes on to explain what appears to us to be the only sound explanation for the appearance of railroad management in support of this bill. He says:

> Nevertheless, under stress of a particular strike, some management spokesmen and some persons and organizations otherwise ardently devoted to our system of free enterprise have at times advocated the compulsory arbitration of labor controversies. It may be doubted whether these spokesmen and organizations have adequately taken into account the drastic consequences inherent in a system of compulsory

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[1]Management Functions Under Collective Bargaining by Ludwig Teller, Baker, Voorhis & Co., Inc., 1947.

arbitration, especially as it relates to wages and other money disputes (p. 327).

Judging from the testimony of railroad management representatives, we think it is clear that they have not "adequately taken into account the drastic consequences" of what they propose. The impact of their argument appears to be that the Railway Labor Act has failed and, therefore, we must abandon our democratic process and resort to statutory prohibition of the right to strike and substitute compulsory arbitration. The testimony which has come from railroad managements fails to recognize the serious implications of what they are endorsing. There is little, if any, testimony to show why they believe such drastic and revolutionary changes in the American concept of collective bargaining will relieve them of the problems of which they complain. We can only conclude that this management endorsement was made in the stress and hysteria of the moment.

While the Railway Labor Act may not have achieved all of the results which might have been hoped for and may yet be hoped for, it is still the best example of the blending of public pressure and individual economic freedom that has yet been devised and it has, by comparison with other methods, worked well.

To the organizations for whom I speak today one of the most important aspects of American freedom and democracy is the right of human beings to bargain with respect to the terms under which they may be willing to enter or continue in their employment. Freedom to bargain necessarily involves not only freedom to agree on the terms of a contract but also freedom not to enter into a transaction unless an acceptable bargain can be negotiated.

Collective bargaining no less than individual bargaining must, if it is to succeed, carry with it the collective right

not to engage in employment unless mutually acceptable terms and conditions of employment can be negotiated. A process, which at any point can have its end in arbitrarily imposed or governmentally determined terms or conditions of employment, is not a bargaining process and cannot be reconciled with the liberties which are essential to the American system of free competitive private enterprise, nor can the right to control and manage private enterprise be preserved if major decisions concerning management policies are to be imposed through the arbitrary methods of compulsory arbitration.

This concept of American freedom is not peculiar to the thinking of those of us who represent labor. Compulsory arbitration to determine the wages and conditions of employment for labor will inevitably compel the extension of arbitrary control to production, prices, markets, and profits. Working people could not long survive in an economic order where their wages were arbitrarily fixed and the cost of their material necessities were subject to free and uncontrolled markets. In this connection, on February 15, 1947, Mr. Ira Mosher, chairman of the executive committee of the National Association of Manufacturers, appearing before the Senate Committee on Labor and Public Welfare, said in part:

> Over and above these basic objections to compulsory arbitration, it is clear that compulsory arbitration leads directly to Government imposition of the terms and conditions of employment. This leads to control of prices, markets, and expansion, until we have complete Government control of the entire economy.
>
> I believe that the Congress is as much concerned as I am about preserving our system of free competitive enterprise and political democracy. If we are to abandon this system in favor of some form of state

socialism, let us by all means do so with our eyes open and on the merits of that kind of system, rather than let ourselves be maneuvered into it under the guise of solving labor-management disputes.[2]

In September 1947 the Department of Manufacture of the Chamber of Commerce of the United States issued a pamphlet entitled "Compulsory Arbitration Opposed." Some of the paragraph titles in that publication are as follows: "Compulsory Arbitration Would Jeopardize Collective Bargaining," "Compulsory Arbitration is Undemocratic," "Compulsory Arbitration Would Become a Political Football," "Compulsory Arbitration Encourages Litigation," "Compulsory Arbitration Does Not Settle Labor Disputes Properly," and "Compulsory Arbitration Does Not Work."

I should like to direct attention to one statement which bears directly upon the point I am urging. On page 10 of this document it is stated:

> Compulsory arbitration is incompatible with our democratic form of government. Such a conclusion follows naturally from the premise that free collective bargaining would fall into the discard. Free collective bargaining was developed under our democratic system as a method whereby employers and employees could voluntarily reach agreements between themselves without the industrial dislocation consequent on work stoppages. Strikes and lock-outs are merely the last resort of the parties, and are used only where voluntary procedures have broken down. They are part and parcel of our democratic system of self-help, under a minimum of Government supervision.

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[2] Hearings before Committee on Labor and Public Welfare, United States Senate, 80th Cong., 1st sess., on S. 55 and S. J. Res. 22, pt. 2, p. 953.

Dr. George W. Taylor, generally considered to be an outstanding authority on labor-management relations has said:

> Implicit in compulsory arbitration is a dreadful sacrifice of cherished notions about the way men should live and work together; and for what? Compulsory arbitrations would not even insure the sought-for continuity of production.
>
> There is neither need nor gain in sacrificing collective-bargaining principles in a vain attempt to avoid public emergency disputes once and for all by compulsory arbitration. It can't be done.[3] (pp. 170-172.)

* * * * *

From 1934 through 1949 the first division of the Board issued 6,613 awards sustaining the claims of the employees, 1,157 awards compromising the employees' claims, 4,610 awards denying the employees' claims, and 360 awards which were issued on a conditional basis. The second division of the Board, for the period from 1935 through the fiscal year ended June 30, 1949, has issued 582 awards sustaining the employees' claims, 218 awards sustaining the employees' claims in part, and 212 awards in which claims were denied. The third division of the Board for the period from 1934 to June 1, 1950, has issued 2,175 awards sustaining the claims of employees in whole or in part; has denied 1,475 claims; remanded 173 claims; dismissed 89 claims; and 922 claims have been withdrawn. The fourth division has sustained 253 claims in whole or in part; denied 206 claims; refused to accept jurisdiction in 10 cases; has remanded 27 claims; dismissed 18 claims; and 98 claims have been withdrawn from this division.

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[3] From an address by Dr. Geo. W. Taylor which was inserted into the Congressional Record by Senator Douglas on February 10, 1949. 95 Congressional Record A686, A689, 81st Cong., 1st sess.

The only reasonable interpretation to be placed on the foregoing figures is that the several divisions of the Board found the carriers have violated our agreements 10,998 times. That is the number of times the Board has sustained the claims of the employees in whole or in part. I should like to add that the disputes which are referred to the Adjustment Board are only those contract violations which have been approved by top-level management. There are many times more contract violations which are settled on the property than go to the Board.

It is a matter of common knowledge that in outside industry there are many strikes caused by alleged agreement violations. We are all aware of the fact that work stoppages of many thousands of men do occur in outside industry because of an alleged contract violation which affects only a few employees. It is a remarkable tribute to the success of the Railway Labor Act that work stoppages, in cases involving the interpretation or application of agreements, have been very few in view of the violations which the foregoing figures indicate have occurred.

For the most part the carriers have applied the awards rendered by the Board, although their failure to do so has resulted in some litigation and caused some strikes. I know of no cases where the employees have not accepted adverse awards of the Board. The carriers' witnesses complained bitterly about these few strikes because the act provides a method of enforcing decisions of the Board through an action in the courts. It must be apparent to anyone familiar with labor-management relations that if the carriers ever force the common use of court procedure in the enforcement of awards of the Adjustment Board, the employees will be compelled to return to the use of economic strength in contract violations in the first instance and refrain from handling cases with the Board. The provisions of this bill

providing for a court review of the awards of the Board will completely destroy the effectiveness of the Board and place in the hands of the carriers a weapon with which they will be able to delay the settlement of all disputes, involving the interpretation or application of agreements, with the result that many strikes will inevitably follow.

The secret of industrial peace in cases involving this type of dispute is the promptness with which the claims are handled. When they cannot be disposed of with reasonable dispatch, the atmosphere becomes charged with emotion, and as the cases accumulate, the pressure increases until an explosion in the form of a strike will certainly follow. (pp. 176-177.)

* * * * *

Colloquy Between Mr. George M. Harrison and Senator Forrest C. Donnell.

The prepared statement read by Mr. Harrison was followed by a colloquy between Mr. Harrison and Senator Donnell regarding the effect of the 1934 amendments to the Railway Labor Act on the right of railway employees to resort to strike action in connection with disputes of the kind over which the National Railroad Adjustment Board has jurisdiction, as follows:

Senator Donnell: Very well. Mr. Harrison, I want to ask you this: At one point in your testimony you said something to the effect that, in your opinion—let me get that so I can quote it accurately here. You say:

> It must be apparent to anyone familiar with labor-management relations that if the carriers ever force the common use of court procedure in the enforcement of awards of the Adjustment Board, the

employees will be compelled to return to the use of economic strength in contract violations in the first instance and refrain from handling cases with the Board.

That is your judgment, I take it.

Mr. Harrison: That is true.

Senator Donnell: Therefore, as I understand it, you take it that it is unwise to attempt, by statute, to enforce against the employees the awards of the Adjustment Board and you think if that attempt is made that instead of alleviating the strike probability it will accentuate and increase that strike probability, is that correct?

Mr. Harrison: No, I do not say that, and I do not think that.

Senator Donnell: Well, what do you think? What is the meaning of the language you use?

Mr. Harrison: My meaning is simply this, Senator: I had something to do with setting up with the Adjustment Board. I appeared before the committees in Congress in 1934 and proposed that whole arrangement. Now we said then and I want to say now we have not changed our mind one bit. We said in 1934, so long as we were free to bargain collectively with the aid of governmental machinery, to arrive at a bargain on wages and working conditions, the making of the contract, we would agree to have that semi-quasi-judicial board established for the purpose of settling disputes arising between the parties over the interpretation and/or application of the agreements. Now in every instance the employees have accepted adverse awards and favorable awards, and you do not have the record of a single case here, nor can one be presented, where we have refused to accept the awards. To the contrary, we have got numerous cases where the railroads got beat before the Board and refused to accept the awards and

refused to put them into effect, and there were some work stoppages as a result of that. Those are the hard facts of the matter.

Senator Donnell: That was not the question I asked you.

Mr. Harrison: That was the answer to your question.

Senator Donnell: The question I asked was, in effect, this: I quoted a statement from your prepared statement to the effect that if the carriers ever forced the common use of court procedure in the enforcement of the awards of the Adjustment Board the employees would be compelled to use their economic strength.

Mr. Harrison: Now, if you read the additional language to get the complete text you will understand what I am saying.

Senator Donnell: You turn to page 15 and in addition to what I read I will be glad to have you read whatever you want.

Mr. Harrison: What I mean is this: If the carriers do not depart from the use of court procedure to determine grievances and to bring about compliance with Adjustment Board decisions, then we are heading for trouble and we cannot use the Adjustment Board machinery that is in the law. In your bill, Senator, you propose that every decision rendered by the Adjustment Board would be subject to review by a court. If the railroad, or the losing party, wanted to take it to court and get a review for either side, we say that is bad, that is unworkable, it creates and invites delay, it invites litigation, it creates an expense that would just be impossible for the employees to live with.

Senator Donnell: You think, therefore, that would result in strikes because of the delay to which you refer?

Mr. Harrison: Now why do I reason it out that way? You see, under the present law, if we have a complaint

against a railroad company that one of our contracts has been violated, that we cannot settle after a conference with railway management, we may, at our own election, take that dispute to the Railroad Adjustment Board for decision, or we may strike if we want to under the present law. But we have gone, as the record shows, to the Adjustment Board, went through all the delay and all the hearing and all of the expense to get a decision. Now we get the decision in favor of the applicants, or plaintiffs, the union, and the railroad says, "Pooh, pooh, we won't put it into effect. If you want to get that out of us, go to court and sue us." Well, we don't want to sue, because we tried the case once, according to the agreed-upon procedure, so we threaten to strike against an arbitrary refusal to put into effect the decision, after they had their day in court. Now they want, in this bill proposed by you, to have the right to go into court and get a review of every decision that is handed down by the Adjustment Board. Well, where would we ever get anything settled? That is nonsense, you can't handle labor relations like that.

Senator Donnell: Mr. Harrison, you are familiar with the fact, are you not, that in this bill there is a specific statement of the subject matter on which the court may review the decision, namely:

> (1) That the findings of fact are clearly erroneous; or (2) that the findings of fact are not supported by substantial evidence; or (3) that the award or order is not supported by the findings of fact; or (4) that the award or order was issued without due notice and reasonable opportunity having been afforded the aggrieved party for a full and fair hearing; or (5) that the award or order is beyond the jurisdiction of the division of the Adjustment Board; or (6) that the award or order infringes the Constitution or statutes

of the United States; or (7) that the award or order is otherwise contrary to law.

Mr. Harrison: It looks to me like you can get into court on pretty nearly any ground, with all those reasons.

Senator Donnell: It is not the case of a trial de novo at all, as I think you will understand from the provision here.

Mr. Harrison: I am not a lawyer, Senator, but I would not agree to that, because you could not test those broad principles without having a trial de novo.

Senator Donnell: I do not agree with you on that, Mr. Harrison.

Mr. Harrison: That is your privilege. (pp. 204-205.)

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